

# Environmental Justice Coalition for Water

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RE: Comments on Environmental Justice Action Plan

January 3, 2005

Tam Doduc  
Deputy Secretary for Environmental Quality  
California Environmental Protection Agency  
P.O. Box 2815  
Sacramento, CA 95812

[EnvJustice@calepa.ca.gov](mailto:EnvJustice@calepa.ca.gov)

Dear Deputy Secretary Doduc,

Thank you for extending the Public Comment Period for review of the latest version of the CalEPA Action Plan and its promising pilot projects to shape better approaches to solving California's most pressing environmental justice challenges. The Environmental Justice Coalition for Water (EJCW) is a coalition made up of over 50 community-based and non-profit organizations throughout California, working on water issues negatively impacting low income and people of color communities in both urban and rural settings. We work to ensure these community voices are heard in water policy.

We want to thank former Secretary Tamminen for his November 8 introduction of the Action Plan at the Public Workshop in Sacramento, when he spoke of environmental justice as a major unfinished social justice movement for the 21<sup>st</sup> Century. We share his estimation of the scope of the challenge, and his emphasis on the need for public agencies to engage it as trustees for present and future generations of Californians. We are encouraged by Secretary Tamminen's acknowledgment of the important legal commitments inherent in the public trust doctrine and its key role in protecting and restoring our state's resources. The legal duties and powers of public trustees have long provided both the authority and criteria for responsible approaches to mitigating cumulative impacts and taking reasonable precautionary action in the absence of complete scientific knowledge. The Supreme Court of Hawaii, relying partly on precedent developed in California's Mono Lake case, set out a clear model for precautionary action in 2000, *In Re Water Permits* 9 P.3d 409 at 468-471 (Hawaii 2000).

The four goals of the Action Plan focusing on "precautionary approaches," "multi-media cumulative impacts," "public participation" and ensuring EJ considerations in policy implementation are very close to our own objectives. It is long past the time to take action and protect the health and well-being of the many people in vulnerable communities who continue to bear a disproportionate burden of health, economic and environmental burdens of business-as-usual in this state. In this vein we strongly support the repeated comments of the California Environmental Rights Alliance and others who have long suggested definite time lines and more

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specific definitions of project goals and methods. We are concerned about how key issues are being framed and dealt with in the Action Plan; our coalition took form specifically to target the institutional barriers to fair treatment of vulnerable communities, and we would like to support the Governor's emphasis on "action." It would be truly unfortunate if an initiative with as much promise as the Pilot Projects were to produce only more "guidelines" on how to implement environmental justice. We should be far beyond that point by this time.

Since our organizational focus is on water, we want to see a useful Pilot Project emerge from this aspect of the EJ Action Plan. We are very pleased to see the focus on Native Tribes in the Northern part of the State, with the combined oversight of the State Water Resources Control Board and the CALFED Bay Delta program. Without key Tribal issues addressed, there can be no enduring solutions to California's water problems. We endorse the involvement of the above groups, but are concerned about whether the definition and scope of the pilot project might be too narrow to approach the most serious environmental justice issues in the region. The words of the Director of DPR in a November 23<sup>rd</sup> letter to EJ stakeholders strike us as particularly important:

"With limited resources-and government resources are always limited in some fashion-we must make choices on what to do first. It is also one of Cal/EPA's founding principles to focus first on the most serious problems and concerns."

Implementing this sentiment would shift focus to the negative impacts caused by the massive interventions in the natural flows of rivers in northern California. The Tribal project could enhance the development of innovative approaches to dealing with the health impacts of contaminated fish consumption as well as opening the door to cleaning up the legacy toxic wastes. More recent water quality impacts of dam operations on traditional diet and on the Tribal culture of Native Californians living in the region have recently been investigated by Dr. Kari Norgaard for the Natural Resources Division of the Karuk Tribe. Analysis of these impacts could make a project focused on this area very valuable in better defining techniques for evaluation of cumulative impacts.

At the last meeting of the Environmental Justice Subcommittee of the Bay Delta Public Advisory Committee, we were impressed by descriptions of several possible projects that might emerge to broaden the focus of the original pilot project criteria. The Natural Resources Division of the Karuk Tribe or environmental officers of the Pitt River Tribe could certainly assist both the SWRCB and CALFED in defining a useful project, perhaps even a collaborative effort that could open the way for inclusion of cultural as well as health impacts. Some currently proposed solutions to water policy problems threaten the very existence and continued viability of several distinct peoples. Native Tribes still need the fish they have always depended on for their health and well being. These fish are both a food source and a ceremonial link between these people and their environment.

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In some situations in Northern California, reservoirs slated for added development have already destroyed many sacred sites and those few still remaining would be lost completely with any increase in water level. When such humanitarian damage is proposed or extended through project construction or operation, the law requires that the public be given an adequate explanation of why the action is justifiable or is the best available management decision. This standard is simply not being met. Renewable arrangements with current water users are often assumed to be part of the background for the future while longstanding patterns of disproportionate impact are ignored. As a matter of environmental justice, our coalition must question these practices and advocate careful attention to public participation, cumulative impacts analysis and precautionary approaches to determine whether planned public action is acceptable or not.

With Federal agencies recently on record undermining public participation in resource decision-making (eg. new Dept. of Interior rules disqualifying any parties except dam owners from appealing conditions on FERC licenses, new rules limiting Forest use appeals, etc.), State environmental justice efforts have do better just to maintain minimal public credibility. Fairness has always been a major goal of environmental justice programs so a fundamental component of the “environment” is actually the social context of policy implementation. We are concerned about vastly different levels of enforcement of environmental standards in different California communities and seemingly different procedural approaches to similar problems that seem to vary depending on the race or the relative socio-economic positions of the people involved. A brief look at standards for the compensable “takings” of private property, in one case applied to white agricultural businesses (Tulare Lake Basin Water Storage District), and in another to Native Californians (Karuk Tribe of CA v. Ammon et. al) quickly reveals one example of the basis for our concern. We hope that pilot projects within the CalEPA Environmental Justice Action Plan will strive to ensure fairness in the application of environmental policies. This is both a substantive and procedural issue.

We are also concerned about the role and composition of the new Advisory Committee being seated in January. These will be the voices giving “public” input into the next phase of the Action Plan. The process of selection and the representation of these public viewpoints is a direct reflection of Cal/EPA’s commitment to environmental justice. We would like to highlight the fact that the “Federally Recognized Tribe” representative is from a gaming group with a major interest in water for the expansion of their casino. Similarly, “business interests” reflect anti-regulatory lobbying efforts, and agriculture is represented by the Farm Bureau Federation, which has historically been more conscious of grower’s interests than farmworkers who face many serious EJ problems. What about the voices that reflect Californians more interested in achieving environmental justice in the long run than in protecting business as usual? Are there enough of these representatives on the panel?

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Overall, we are hopeful that the years of energy put into this CalEPA effort will come into stronger focus with the various pilot projects and refinement that will come with implementation of the new Action Plan. We look forward to continuing involvement in the process.

Sincerely,

Steering Committee, Environmental Justice Coalition for Water

The Public Trust Alliance  
Clean Water Action  
Latino Issues Forum  
Institute for Sustainable Studies  
La Union del Pueblo Entero/UFW  
Seaport Missionary Baptist Church